

CHAPTER 67:17:02

FAIR HEARINGS

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67:17:02:01. Right to hearing. An applicant for or recipient of public assistance or services whose application for assistance or services is denied or is not acted upon or who is aggrieved by an action affecting receipt, suspension, reduction, or termination of the applicant's or recipient's assistance or services, the application of law and policy to the applicant's or recipient's situation, or the manner or form of payment, including restricted or protective payments, may appeal the action or inaction as provided in this chapter. A hearing need not be granted when either state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is an incorrect grant computation. An individual or entity that is aggrieved by the department's action or inaction taken under the provisions of ARSD Title 67 may request a hearing. A hearing is conducted under the provisions of this chapter and SDCL chapter 1-26. A hearing is not allowed when either state or federal law requires automatic grant adjustments unless the reason for the hearing is an incorrect computation.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:01, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 8 SDR 58, effective November 29, 1981.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

67:17:02:02. Right to be informed of hearing process. The department shall inform each applicant and recipient of the right to ~~the fair hearing process~~ request a hearing. This ~~information shall be printed~~ The department shall print this information on all applications for public assistance and on all formal notices issued by the department concerning an action taken. ~~Department workers shall explain to an applicant the right to a hearing at the time the application is submitted and shall inform the applicant or recipient of the right to a fair hearing at any time an action is taken affecting the rights or status of an applicant or recipient. Department workers shall also explain to applicants that they have the right to appear in person at the time of the hearing, to be assisted at the hearing by a friend, relative, or lawyer at the applicant's or recipient's own cost, and to withdraw or abandon the hearing. Department workers shall explain to applicants that the request for a hearing may be written or oral but that it has to be made within 30 days after the action complained of or 30 days after action should have been taken as provided by law or rule.~~

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:02, 2 SDR 71, effective April 29, 1976; 6 SDR 66, effective January 10, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

67:17:02:03. ~~How to request a hearing~~ **Hearing requests.** ~~An appellant may initiate the hearing procedure by filing with either the state office or any local office of the department a request for a hearing. Any clear expression, either oral or written, by the appellant or a person acting for the appellant, such as a legal representative, relative, or friend, to the effect that the appellant wants the opportunity to present the appellant's claim to a higher authority shall be recognized as a request for a fair hearing.~~ To appeal a department action or inaction made under the food stamp program the individual must clearly express to the department an intent to appeal. The request for an appeal may be made either orally or in writing.

For all other department programs, to appeal a department action or inaction the individual or an individual representing the entity affected must submit a written and signed request for a hearing to the Department of Social Services, Office of Administrative Hearings. A person assisting an individual such as a relative, friend, or attorney may request a hearing on the individual's behalf.

When making a request for a hearing, the individual requesting the appeal must indicate what department action is being appealed. If the reason for the appeal is unclear, any party involved in the action may request the Office of Administrative Hearings to further clarify the issue.

If the entity requesting a hearing is a corporation, the corporation must be represented throughout the hearing process by its attorney.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:03, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

67:17:02:04. Time limits for requesting hearing. A request for a fair hearing must be made within one of the following time limits:

(1) Ten days after a nursing facility receives the department's final decision on issues relating to resident assessments and the resulting payment adjustment made under the provisions of chapter 67:45:03;

(2) Ten days after a decision entered as a result of a review on a petition to stay service of a proposed withholding action for the child support enforcement program;

(3) Ten days after a decision is entered as a result of a review concerning the furnishing of information to consumer reporting agencies;

(4) Ten days after a decision is entered as a result of a review concerning restricting the issuance or renewal of an absent parent's driver's, professional, sporting, or recreational license, registration, certification, or permit;

(5) Thirty days after the department sends its final audit report to a nursing facility or up to 60 days after the department sends its final audit report to a nursing facility and the department has granted an extension of time to request a fair hearing to the facility;

(6) Thirty days after notice of the action complained of or of the conference decision or 30 days after action should have been taken by the department as provided by law or rule;

(7) Thirty days after the department sends its written decision as a result of an informal review of a request to amend, expunge information, or remove a record from the central registry;

(8) Thirty days after the department notifies a child care provider or a recipient of child care services of an intended action;

~~(8)~~(9) Sixty days after an action is taken by the department or after any loss of benefits relating to the energy crisis intervention program or the low income energy assistance program;

~~(9)~~(10) Ninety days after an action is taken by the department or after any loss of benefits relating to food stamps; or

(40)(11) Ten days after a decision is entered as a result of a review concerning a lottery setoff for the child support enforcement program.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:04, 2 SDR 71, effective April 29, 1976; 3 SDR 26, effective October 6, 1976; 6 SDR 66, effective January 10, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 10 SDR 30, effective October 3, 1983; 14 SDR 97, effective January 17, 1988; 15 SDR 100, effective January 12, 1989; 16 SDR 26, effective August 13, 1989; 18 SDR 112, effective January 9, 1992; 18 SDR 134, effective February 25, 1992; 20 SDR 28, effective August 31, 1993; 21 SDR 8, effective July 25, 1994; 22 SDR 188, effective July 8, 1996; 26 SDR 21, effective August 24, 1999; 28 SDR 112, effective February 20, 2002.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

Collateral Reference: § 1703.1 -- Time period for requesting a hearing, South Dakota Food Stamp Program Certification and Accountability Manual.

Cross-References:

Request for fair hearing -- Low income energy assistance program, § 67:15:01:49.

Request for fair hearing -- Energy crisis intervention program, § 67:15:04:07.

Request for fair hearing -- Withholding action -- Child support enforcement program, § 67:18:01:58.02.

Request for fair hearing -- Furnishing information to consumer reporting agencies -- Child support enforcement program, § 67:18:01:49.03.

Request for fair hearing -- Audit reports to nursing facilities, § 67:16:04:37.

Time limits for requesting fair hearing, § 67:16:04:38.

Request to amend, expunge information, or remove record -- Informal review -- Fair hearing, § 67:14:39:06.

~~—Administrative review and fair hearing before restricting issuance of licenses, § 67:18:01:62.~~

Fair hearing – Resident assessments and payment adjustments, § 67:45:03:12.

Administrative review – Lottery setoff, § 67:18:01:58.03.

Administrative review and fair hearing before restricting issuance of license, registration, certification, or permit, § 67:18:01:62.

67:17:02:11. Time and place of hearing. ~~A department hearing examiner shall set the time and place for a fair hearing to be held at the earliest reasonable time. The hearing examiner may continue the hearing at the request of any of the parties involved~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:11, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 17 SDR 50, effective October 7, 1990.

~~General Authority: SDCL 28-1-24.1.~~

~~Law Implemented: SDCL 28-1-24.1.~~

~~67:17:02:11.01. Telephone hearings and hearings over the rural development telecommunications network~~ **Hearings conducted by electronic means.** The hearing examiner may order that hold a hearing be held by telephone conference or over the rural development telecommunications network by electronic or digital means. The hearing examiner shall inform the parties of the time of the hearing and the location of either a conference telephone or a rural development telecommunications studio. Any party to the action may request that the hearing not be held by either method and that the hearing examiner and any other party involved be personally present for the hearing. The request must be in writing and the hearing examiner must receive the request at least five calendar days before the scheduled hearing. The hearing examiner shall then set a time and place for the hearing and shall notify the parties involved. Any continuance of the date of a hearing caused by the rejection shall increase the time allowed for final administrative action under § 67:17:02:27 by the same number of days.

~~If the hearing is to be held by telephone conference or over the rural development telecommunications network~~ For telephonic, electronic, or digital hearings, all parties must submit their proposed ~~real or documentary evidence~~ exhibits to the hearing examiner and to the other parties involved at least five calendar days before the hearing date. Any additional ~~real or documentary evidence~~ admitted during the hearing must be submitted to the hearing examiner and to any other parties involved no later than 10 calendar days after the hearing. The hearing examiner shall exclude from the record evidence that is not submitted within the time limits.

Source: 17 SDR 50, effective October 7, 1990; 23 SDR 192, effective May 22, 1997.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

67:17:02:12. Written notice of hearing. At least ten days prior to the hearing, the department shall give written notice of the time and place of the hearing to the appellant, the appellant's attorney or other authorized representative, the local worker, the worker's supervisor, and the affected office within the department. The notice may be waived by agreement of all parties. The notice shall advise all parties to be present at the hearing with their witnesses and have with them all exhibits and documents they desire to introduce into evidence and that they have the right to request a hearing examiner to issue subpoenas for witnesses or documentary evidence. The notice shall include a statement that either the appellant or the department, or both, may be represented by an attorney or other authorized representative or they may represent themselves. The notice shall further state that there are no provisions for the payment of appellant's legal fees by the department. Unless waived by all parties, at least 10 days before the hearing the department shall send a written notice of the hearing to the parties involved in the action. In addition to the information required under SDCL 1-26-17, the notice shall contain the following information:

- (1) A statement that the parties must be present at the hearing with their witnesses;
- (2) A statement that the parties must have all the exhibits and documents intended to be introduced into evidence;
- (3) A statement that the parties have the right to request the hearing examiner to issue subpoenas for witnesses or documentary evidence;
- (4) A statement that the parties may represent themselves, may be represented by an attorney, or may be assisted by another person such as a friend or relative;
- (5) A statement that a corporation must be represented by its attorney;
- (6) A statement that the department is not responsible for the appellant's legal fees; and
- (7) A statement that the department is not responsible for the expenses of any individuals appearing on behalf of the appellant.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:12, 2 SDR 71, effective April 29, 1976; 3 SDR 26, effective October 6, 1976; 6 SDR 66, effective January 10, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

Cross-Reference: Default, § 67:17:02:14.

67:17:02:13. Denial or dismissal of a request for a fair hearing—Withdrawal from the hearing **Dismissal**. The department hearing examiner may deny or dismiss a request for a hearing an appeal under any of the following circumstances:

(1) If it has been withdrawn by the appellant in writing. A request for a hearing may be voluntarily withdrawn by an appellant at any time. A withdrawal must be in writing over the appellant's signature and must set forth the reason for the withdrawalExcept for appeals involving medical assistance, the appellant indicates in writing or verbally that the appellant wishes to withdraw the appeal;

(2) For appeals involving medical assistance, the appellant has submitted to the department a written request to withdraw the appeal;

(3) The appellant and the department resolve the case before the hearing examiner enters a final decision;

(2)(4) If theThe sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients; or

(3)(5) If it is abandoned by the appellantThe appellant is in default according to § 67:17:02:14.

—In addition to subdivision (1) of this section, a food stamp applicant or recipient may make an oral request that a fair hearing be withdrawn. If the request is an oral request, the department shall send a written notice to the household confirming the request and shall provide the household with another opportunity to request a fair hearing.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:13, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 23 SDR 122, effective February 6, 1997.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

Cross-Reference: Informal resolution, § 67:17:02:16.

67:17:02:14. Abandonment of hearing **Default.**—A request for fair hearing may be considered as abandoned by the appellant under the following circumstances. An appellant is considered to be in default if one of the following circumstances exists:

(1) ~~The appellant fails to appear at the hearing either in person or represented by an authorized representative;~~ The appellant failed to appear at the hearing, did not request an exemption for appearing at the hearing at least 10 days before the hearing, and the Office of Administrative Hearings did not grant an exemption from this requirement before the hearing;

(2) ~~The appellant fails to reply within a reasonable time~~ 10 days ~~to a request by the hearing examiner~~ the hearing examiner's request ~~to show good cause for the appellant's failure to appear, or the appellant does not show good cause~~ at a hearing; or

(3) ~~The appellant or the appellant's authorized representative appears at the hearing and orally states that the appellant desires to abandon the hearing~~ hearing examiner finds that the reason the appellant failed to appear does not constitute good cause.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:14, 2 SDR 71, effective April 29, 1976; 6 SDR 66, effective January 10, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

~~67:17:02:15. Appellant improperly influenced to withdraw or abandon fair hearing. If it becomes evident to the hearing examiner that the appellant was improperly induced or influenced to withdraw or had not knowingly withdrawn or abandoned the request for hearing, the hearing examiner may proceed with the hearing as if there was no withdrawal or abandonment.~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:15, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

~~General Authority: SDCL 28-1-24.1.~~

~~Law Implemented: SDCL 28-1-24.1.~~

67:17:02:16. Informal ~~adjustment procedure resolution~~. ~~At any time before the entry of a decision in relation to a hearing, the local worker may take corrective action or amend or reverse the worker's previous actions as the circumstances require. If action is taken before the hearing or before the decision, the hearing examiner shall be fully informed of the action immediately. Any time before a final decision is entered, the department may take action to resolve the case. If the appellant is not represented by an attorney, the department may contact the appellant directly. If the appellant is represented by an attorney, department contact is limited to the appellant's attorney. If the department resolves the case, the department must inform the hearing examiner immediately.~~

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:16, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

67:17:02:17. Who may attend the hearing. ~~Hearings are not open to the public and may be attended only by the department and the appellant and persons whom the appellant may wish to have attend or represent or assist the appellant, by the representative of the department who may have been concerned with the action complained of, and by the witnesses for the appellant and the department.~~ If the hearing involves a corporation, its attorney must represent the corporation at the hearing

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:17, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

67:17:02:23. When hearing involves medical issues. ~~When the hearing involves medical issues, a medical assessment by a general practitioner or a specialist in the area of the alleged disability or incapacity other than that of the person involved in making the original medical examination shall be authorized if the hearing examiner considers it necessary and shall be made part of the record. If the additional medical assessment recommends referral for additional examination or testing, it shall be authorized and paid for by the department~~
Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:23, 2 SDR 71, effective April 29, 1976; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

~~General Authority: SDCL 28-1-24.1.~~

~~Law Implemented: SDCL 28-1-24.1.~~

67:17:02:27. Final decision by secretary. Based on the transcript or recording of testimony, the exhibits, and the proposed decision, the secretary or a designee shall enter a final decision accepting, rejecting, or modifying the proposed decision. ~~Prompt, definitive, and final administrative action shall be taken by mailing the notice of decision within ninety days from the date of request for the hearing except where an appellant requests a delay or adjournment in the hearing or where a different time period is established by statute or rule. In the case of a food stamp hearing, the agency shall assure, within sixty days after receipt of a request for a hearing, that the hearing is conducted, a decision is reached, and the household and local agency notified of the decision. If the hearing involves a food stamp issue, the decision must be mailed to the parties involved within 60 days after the request for the hearing. For all other hearings, the decision must be mailed to the parties involved within 90 days from the date of the request for the hearing.~~

If a continuance of a hearing is requested and the parties to the action stipulate to the continuance, the time allowed for mailing the final decision is extended for the same number of days for which the continuance is granted.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:27, 2 SDR 71, effective April 29, 1976; 3 SDR 26, effective October 6, 1976; 6 SDR 66, effective January 10, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981.

General Authority: SDCL 28-1-24.1.

Law Implemented: SDCL 28-1-24.1.

Cross-References:

Tentative or proposed decision served on parties – Contents – Waiver, SDCL 1-26-24.

Request for a hearing to release name of complainant in unsubstantiated investigation, SDCL 26-8A-11.

Collateral Reference: § 1702 -- State-level hearing 7120 – Fair hearing time frames; § 4703.3 7133 -- Household requests for postponements, South Dakota Food Stamp Program Certification and Accountability Manual.

67:17:02:28. Notice of decision. ~~The secretary or a designee shall give notice of the decision entered by mailing a copy of the decision to the appellant, the appellant's attorney or authorized representative, and to the department personnel connected with the case~~ Repealed.

Source: SL 1975, ch 16, § 1; transferred from § 67:12:03:28, 2 SDR 71, effective April 29, 1976; 3 SDR 26, effective October 6, 1976; 6 SDR 66, effective January 10, 1980; 7 SDR 66, 7 SDR 89, effective July 1, 1981; 17 SDR 50, effective October 7, 1990.

~~General Authority: SDCL 28-1-24.1.~~

~~Law Implemented: SDCL 28-1-24.1.~~

67:47:01:25.01. Overpayments – Hearings – Payments made pending hearing. If the department finds evidence that an overissuance has occurred as a result of an error committed by the department or an inadvertent error on the part of the client or the provider, the department shall notify the individual in writing that the individual has the right to a fair hearing. The request for a fair hearing must be made within ~~40~~30 days after the individual receives the notice of the intended action. A fair hearing is conducted according to chapter 67:17:02.

__A parent or provider must follow the provisions of § 67:10:10:07 in order to continue receiving child care assistance pending the fair hearing. Payments made during this time are considered overpayments and are subject to recoupment if the final decision from the hearing upholds the department's decision to close the case or reduce the benefit amount.

A provider may not request a fair hearing if the issue concerns a client. A client may not request a fair hearing if the issue concerns a provider.

If the department finds evidence that indicates an intentional program violation has occurred, the department may initiate an administrative disqualification hearing or may refer the matter to federal, state, or local officials for further legal action. An administrative disqualification hearing is held according to the provisions of SDCL chapter 1-26 and ARSD chapters 67:17:02 and 67:48:05.

Source: 28 SDR 111, effective February 20, 2002.

General Authority: SDCL 28-1-61.

Law Implemented: SDCL 28-1-61.

Cross-reference: Benefit paid in error as result of intentional program violation, § 67:48:05:03.

67:47:02:19. Overpayments – Hearings – Payments made pending hearing. If the department finds evidence that an overissuance has occurred as a result of an error committed by the department or an inadvertent error on the part of the client or the provider, the department shall notify the individual in writing that the individual has the right to a fair hearing. The request for a fair hearing must be made within ~~40~~ 30 days after the individual receives the notice of the intended action. A fair hearing is conducted according to chapter 67:17:02.

__A parent or provider must follow the provisions of § 67:10:10:07 if they wish to continue receiving child care assistance pending the fair hearing. Payments made during this time are considered overpayments and are subject to recoupment if the final decision from the hearing upholds the department's decision to close the case or reduce the benefit amount.

A provider may not request a fair hearing if the issue concerns a client. A client may not request a fair hearing if the issue concerns a provider.

If the department finds evidence that indicates an intentional program violation has occurred, the department may initiate an administrative disqualification hearing or may refer the matter to federal, state, or local officials for further legal action. An administrative disqualification hearing is held according to the provisions of SDCL chapter 1-26 and ARSD chapters 67:17:02 and 67:48:05.

Source: 22 SDR 188, effective July 8, 1996; 24 SDR 30, effective September 14, 1997; 28 SDR 111, effective February 20, 2002.

General Authority: SDCL28-1-61.

Law Implemented: SDCL28-1-61.

67:47:03:31. Overpayments – Hearings – Payments made pending hearing. If the department finds evidence that an overissuance has occurred as a result of an error committed by the department or an inadvertent error on the part of the client or the provider, the department shall notify the individual in writing that the individual has the right to a fair hearing. The request for a fair hearing must be made within ~~40~~ 30 days after the individual receives the notice of the intended action. A fair hearing is conducted according to chapter 67:17:02.

___A parent or provider must follow the provisions of § 67:10:10:07 if they wish to continue receiving child care assistance pending the fair hearing. Payments made during this time are considered overpayments and are subject to recoupment if the final decision from the hearing upholds the department's decision to close the case or reduce the benefit amount.

A provider may not request a fair hearing if the issue concerns a client. A client may not request a fair hearing if the issue concerns a provider.

If the department finds evidence that indicates an intentional program violation has occurred, the department may initiate an administrative disqualification hearing or may refer the matter to federal, state, or local officials for further legal action. An administrative disqualification hearing is held according to the provisions of SDCL chapter 1-26 and ARSD chapters 67:17:02 and 67:48:05.

Source: 24 SDR 30, effective September 14, 1997; 28 SDR 111, effective February 20, 2002.

General Authority: SDCL 28-1-61(11).

Law Implemented: SDCL 28-1-60.